

commercial rates, it must conduct a new survey in order to develop relevant data.

In its initial Rate Order, the Commission recognized the distinction between residential and commercial customers, at least in the context of charges for additional outlets. See Rate Order, n.747. Thus, if the Commission decides to apply its residential rate regulation scheme to commercial customers, it must, at a very minimum, confirm that a cable operator may impose its authorized residential rates for cable service supplied to each outlet in a commercial setting. Thus, for example, if an operator's allowable rate for basic service is \$10.00, the operator may charge up to \$10,000 per month for service to a 1,000 unit hotel. It would be patently unfair to allow the hotel owner to order basic service to a single unit for \$10 and then extend service to the other 999 units for free, just as it would be unfair for a homeowner to subscribe to cable and run an illegal connection to his neighbor.

While it may be within the purposes of the Act to reduce residential rates, it does not follow that commercial rates should likewise be reduced. Moreover, by allowing cable providers to charge the marketplace rate for commercial service, cable operators could earn reasonable profits<sup>71</sup> while not compromising their ability to provide new programming services,

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<sup>71</sup>"The conferees agree that the cable operators are entitled to earn a reasonable profit." H.R. Conf. Rep. at 63.

or to actively participate in building the "information superhighway."<sup>72</sup>

2. Whether Or Not Commercial Rates Are Regulated, They Should Not Be Required To Be Uniform.

When Congress adopted the uniform rate requirement in Section 623(e), the purpose of such requirement was to ensure that all residential subscribers within a given franchise area received uniform rates:

[C]able operators must offer uniform rates throughout the geographic area in which they provide cable service. This provision is intended to prevent cable operators from having different rate structures in different parts of one cable franchise. This provision is also intended to prevent cable operators from dropping the rates in one portion of a franchise area to undercut a competitor temporarily.<sup>73</sup>

Thus, whether or not the Commission properly applied rate uniformity to bulk discount structures applicable to reasonable categories of multiple dwelling unit residences, Congress evidenced no intent to include commercial subscribers in its uniformity requirement.

Moreover, in light of the disparity of uses by commercial subscribers, it does not follow that commercial subscribers should be subjected to a single uniform rate either, even if such rate were distinct from the residential rate. Despite Section 623(e)'s requirement that rate structures be uniform, the Commission has noted:

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<sup>72</sup>"The private sector will lead the development of the NII." See National Information Infrastructure: Agenda for Action, Administration Policy Statement, 58 Fed. Reg. 49,025 (1993).

<sup>73</sup>S. Rep. at 76.

The legislative history does not reveal any congressional intent to mandate a uniform rate for all services and classes of customers. Indeed, Section 623(e) specifically contemplates special categories of customers may receive separate rates.<sup>74</sup>

Considering the diversity of needs and uses of commercial subscribers detailed above, uniform commercial rates would be inappropriate; it would be impossible to create rate uniformity without uniformity of programming, a result that is not desirable either to the cable operator or the commercial customer.

3. Commercial Rates Should Not Be Used To Offset Residential Rates.

As has been noted, the goal of rate regulation is to set rates at reasonable levels. According to the directive of Congress, reasonable rate levels are those levels that would exist with effective competition. "Reasonable rate levels" for commercial establishments do not mean the lowest-priced residential cable service that can be attained through offsetting contributions from commercial users. Accordingly, if the Commission decides to regulate commercial rates, such rates should be set at that level which best emulates a market-driven price. As Time Warner has explained, effective competition for commercial subscribers undeniably already exists and such rates can be measured. At minimum, such determinations should be made independent of the residential rates which formed the basis of the Commission's "benchmark" rate formula.

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<sup>74</sup>April 1993 Report and Order, supra at ¶ 423.

4. If The Commission Decides To Regulate Commercial Rates, It Should Be At The Option Of The Local Franchising Authority.

Congress intended that local franchising authorities control the regulation of basic cable rates.<sup>75</sup> Moreover, franchising authorities can only regulate basic cable rates after they petition the FCC for certification.<sup>76</sup> In other words, the decision to regulate is wholly a decision for the local franchising authority. Because there is no evidence of a problem with the "reasonableness" of commercial rates, cities should not be forced to regulate where they might not desire to do so.

Therefore, in accordance with Congressional intent, local franchising authorities should determine which basic cable rates in their franchise are to be regulated, residential, commercial or both. Indeed, in light of the diversity of programming that cable operators provide to individual commercial subscribers,<sup>77</sup> cities may not want to regulate commercial rates because to do so would foreclose cable operators' flexibility in delivering cable service offerings to meet the needs of divergent commercial users.

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<sup>75</sup>H.R. Rep. No. 628 at 80 ("[s]ubsection (a)(1) empowers any franchising authority to regulate rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers . . . .")

<sup>76</sup>47 U.S.C. § 543(b)(2).

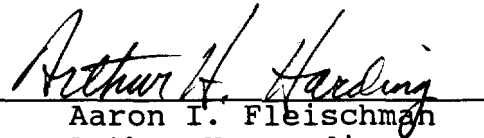
<sup>77</sup>I.e., brokerage houses, specialized hotels, television networks, U.N., etc. Discussed in II. B., supra.

For the above-stated reasons, Time Warner urges the Commission to resist imposing rate regulation on the provision of video services to commercial cable users. However, if the Commission determines that regulation should be imposed on commercial rates, it should be effected at each franchising authority's option, and the rates should be unrelated to, and should not be used to offset, residential rates.

Respectfully submitted,

TIME WARNER CABLE

By



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Date: June 29, 1994

**EXHIBIT A**

# Commercial Rate Card

Fire Code/Estimated Viewing Area (EVA)	0-50	51-100	101-150	151-200	200+
Annual Subscription Rate*	\$900	\$1200	\$1800	\$2400	\$3000
Monthly Equivalent	\$75	\$100	\$150	\$200	\$250
Average Cost Per Day	\$2.50	\$3.33	\$5.00	\$6.66	\$8.33

\*Minimum 12-month term. Rates are for 12 months. Minimum subscription for 12 months. Rates are for 12 months. Rates are for 12 months.

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CA & SD, Broadway, dance, opera, classical music, comedy and documentaries.

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